

R. Collin Middleton, Esq.
Law Offices of R. Collin Middleton, P.C.
P.O. Box 113128
Anchorage, Alaska 99511
Ph: 907-222-0506
Fax: 907-279-7029
Email: collinmiddleton@gci.net

Counsel for Defendant, Koniag, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

OMAR STRATMAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. A02-0290 CV (JKS)
)	
LEISNOI, INC., KONIAG, INC., and)	
GALE A. NORTON, Secretary of the)	
Interior,)	
)	
Defendants.)	
_____)	

**MOTION TO STAY OR IN THE ALTERNATIVE
DISMISS MR. STRATMAN'S MOTION TO AFFIRM
THE IBLA DECISION**

Koniag joins the Motion to Stay by Leisnoi at Docket 193 and adopts the reasoning of Leisnoi in its accompanying Memorandum at Docket 194. Koniag also adopts the reasoning soon to be set forth by the Secretary.

Additionally, Mr. Stratman states at Docket 177 (Motion for Order to File Complete Administrative Record), that:

Mr. Stratman contends that the complete Administrative Record, including the record developed by the Administrative Law Judge at the two-week administrative trial of this matter, is necessary to allow this Court to conduct its review of IBLA's decision, affirming the Administrative Law Judge's findings and determinations, for the purpose of determining whether IBLA's ultimate holding that Leisnoi was not entitled to ANCSA village status is supported by substantial evidence.

As Koniag defends in its Answer to the Third Amended Complaint and Counterclaim, (Docket 200) the findings of the Administrative Law Judge neither were supported by the facts before him, nor was the law he cited correct. These arguments were never addressed by IBLA. Koniag filed a 102 page brief to the IBLA setting forth at what points the Administrative Law Judge's proposed decision was neither supported by the facts or the law. Rather than file yet another massive set of exhibits, Koniag will rely on Leisnoi's exhibits, attached as Exhibits 3-14 (Dockets 193-4 to 193-14) to its Motion to Stay at Docket 193, which clearly show there are genuine issues of material fact precluding the unquestioned acceptance of the IBLA decision, or the ALJ decision, both of which Mr. Stratman urges.

Consequently, Koniag requests that Mr. Stratman's Motion be stayed pending the resolution of the other current motions before this Court. Alternatively, Koniag requests that the Motion be dismissed because if this Court denies the Secretary's Decision that the claim is moot, it is deprived of final agency action, which it must seek. Or as a further request, Koniag requests that the motion must be dismissed because there are genuine issues of material fact under F.R.C.P. 56(c).

Finally, and as a last alternative, Koniag requests that it be allowed to respond to Mr. Stratman's Motion thirty days after the Administrative Record is provided. Without the Administrative Record, Koniag cannot show the many ways the documents attached by Leisnoi argue are correct and the Administrative Law Judge and IBLA findings were not supported by the facts or the law. F.R.C.P. 56(d).

DATED at Anchorage, Alaska this 13th day of July, 2007.

LAW OFFICES OF R. COLLIN MIDDLETON

Attorneys for Defendant
Koniag, Inc.

By /s/ R. Collin Middleton

R. Collin Middleton
ABA #6803015
Law Offices of R. Collin Middleton, P.C.
P.O. Box 113128
Anchorage, AK 99511
907-222-0506
907-279-7029 – Fax
collinm Middleton@gci.net

Certificate of Service

The undersigned certifies that the foregoing document was served Electronically on this 13th day of July, 2007.

Bruce M. Landon
Department of Justice
Environment & Natural Resources Division
801 "B" Street, Suite 504
Anchorage, Alaska 99501-3657

John R. Fitzgerald, Esq.
Morrison Mahoney LLP
250 Summer Street
Boston, MA 02210-1181

Michael Schneider, Esq.
880 "N" Street, Suite 202
Anchorage, Alaska 99501

/s/ R. Collin Middleton